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PHILIPS ELECTRONICS NORTH

AMERICA CORPORATION, a Delaware corporation

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

PHILIPS ELECTRONICS NORTH
AMERICA CORPORATION, a Delaware
corporation,

Plaintiff,

v.

TRIKARDIA, LLC, a Delaware limited
liability company, ROBERT ANTINORO,
an individual, SIDDHARTH BHAVSAR,
an individual,

Defendants.

The Hon. Michael W. Fitzgerald

Mag. Judge Charles F. Eick

NO. 2:15-cv-03901 MWF-E

PROTECTIVE ORDER

1 Charles F. Eick: Magistrate Judge:

2 The parties having agreed to the following terms of confidentiality, and the
3 Court having found that good cause exists for issuance of an appropriately tailored
4 confidentiality order governing the pre-trial phase of this action, it is therefore
5 hereby
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8 ORDERED that any person subject to this Order — including without
9 limitation the parties to this action, their representatives, agents, experts and
10 consultants, all third parties providing discovery in this action, and all other
11 interested persons with actual or constructive notice of this Order — shall adhere
12 to the following terms, subject to a finding of contempt:
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14 1. Any person subject to this Order who receives from any other person
15 any “Discovery Material” (i.e., information of any kind provided in the course of
16 discovery in this action) that is designated as “Confidential” or “Confidential –
17 Attorneys’ Eyes Only” pursuant to the terms of this Order shall not disclose such
18 Discovery Material to anyone else except as expressly permitted hereunder.
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21 2. The person producing any given Discovery Material may designate
22 as Confidential only such portion of such material that a Producing Party
23 considers in good faith to contain confidential, commercially sensitive and/or
24 proprietary information not otherwise known or available to the public. The
25 following are examples of information that is not considered confidential: (a)
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1 advertising materials, and (b) materials that on their face show that they have been
2 published to the general public. By way of non-limiting example, documents in
3 one or more of the following categories may qualify for the "Confidential"
4 designation: information (regardless of how generated, stored or maintained) or
5 tangible things that qualify for protection under standards developed under
6 F.R.C.P. 26(c); non-public, non-commercially sensitive technical information,
7 including data sheets, product schematics technical references materials, and other
8 non-public technical descriptions and/or depictions of the relevant technology.
9 The parties expressly agree to avoid "blanket" designations of "confidential"
10 material and limit the designations to the above categories.
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14 3. The person producing any given Discovery Material may designate
15 as Confidential – Attorneys' Eyes Only information that is confidential and/or
16 sensitive in nature and that the Producing Party reasonably believes that the
17 disclosure of such information may cause economic harm or competitive
18 disadvantage to the Producing Party. By way of non-limiting example, documents
19 in one or more of the following categories may qualify for the "Confidential –
20 Attorneys' Eyes Only" designation: (i) commercially sensitive research and
21 development, technical, testing or engineering documents (including CAD
22 diagrams, manufacturing and engineering drawings, engineering notebooks,
23 specifications, requirement documents, research notes and materials); (ii)
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1 commercially sensitive financial information (e.g., the number of products sold,
2 total dollar value of sales products, sales forecasts, and profit margins); (iii)
3 commercial agreements, settlement agreements or settlement communications,
4 (iv) customer lists, employee information, and other non-public information of
5 similar competitive and business sensitivity; (v) commercially sensitive business
6 and/or marketing plans, including, without limitation, trade secrets, pricing
7 information, product development information; (v) price lists and/or pricing
8 information; (vii) information obtained from a non-party pursuant to a current
9 Non-Disclosure Agreement (NDA); and (viii) non-public communications
10 (including emails) regarding topics relating to items (i)-(vii).
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14 4. With respect to the confidential or sensitive portion(s) of any
15 Discovery Material other than deposition transcripts and exhibits, the producing
16 person or that person's counsel may designate such portion as "Confidential" or
17 "Confidential – Attorneys' Eyes Only" by stamping or otherwise clearly marking
18 as "Confidential" or "Confidential – Attorneys' Eyes Only" the document or
19 protected portion(s) in a manner that will not interfere with legibility or audibility.
20 Deposition testimony may be designated as Confidential or Confidential –
21 Attorneys Eyes Only either on the record during the deposition or within 5 days
22 of receipt of the transcript.
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1 5. If at any time prior to the trial of this action, a producing person
2 realizes that some portion[s] of Discovery Material that that person previously
3 produced without limitation should be designated as Confidential or Confidential
4 – Attorneys Eyes Only, he may so designate by notifying all parties in writing,
5 and such designated portion[s] of the Discovery Material will thereafter be treated
6 as Confidential or Confidential – Attorneys’ Eyes Only under the terms of this
7 Order. In addition, the producing person shall provide each other party with
8 replacement versions of such Discovery Material that bears the “Confidential” or
9 “Confidential – Attorneys’ Eyes Only” designation within two (2) business days
10 of providing such notice.
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12 6. No person subject to this Order other than the producing person shall
13 disclose any of the Discovery Material designated by the producing person as
14 Confidential to any other person whomsoever, except to:
15

16 (a) the parties to this action and, with respect to Discovery
17 Material designated as Confidential that was produced by a non-party, also to such
18 non-party, provided such person has first executed a Non-Disclosure Agreement
19 in the form annexed as an Exhibit hereto;
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21 (b) counsel retained specifically for this action, including any
22 paralegal, clerical and other assistant employed by such counsel and assigned to
23 this matter;
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1 (c) as to any document, its author, its addressee, and any other
2 person indicated on the face of the document as having received a copy;
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4 (d) any witness who counsel for a party in good faith believes may
5 be called to testify at trial or deposition in this action, provided such person has
6 first executed a Non-Disclosure Agreement in the form annexed as an Exhibit
7 hereto;
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9 (e) any person retained by a party to serve as an expert witness or
10 otherwise provide specialized advice to counsel in connection with this action,
11 provided such person has first executed a Non- Disclosure Agreement in the form
12 annexed as an Exhibit hereto;
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14 (f) persons engaged to transcribe depositions conducted in this
15 action; and
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17 (g) independent photocopying, graphic production services, or
18 litigation support services employed by the parties or their counsel to assist in this
19 action and computer service personnel performing duties in relation to a
20 computerized litigation system;
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22 (h) the Court and its support personnel; and
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24 (i) any other person whom the producing person, or other person
25 designating the Discovery Material confidential pursuant to paragraph 8 below,
26 agrees in writing may have access to such Discovery Material.

1 7. No person subject to this Order other than the producing person shall
2 disclose any of the Discovery Material designated by the producing person as
3 Confidential – Attorneys’ Eyes Only to any other person whomsoever, except to
4 those listed in Paragraphs 6(b) and 6(e) through (i) and in-house counsel with
5 responsibility for this case.
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8 8. Prior to any disclosure of any Confidential or Confidential –
9 Attorneys’ Eyes Only Discovery Material to any person referred to in
10 subparagraphs 6(a), 6(d) or 6(e) above, such person shall be provided by counsel
11 with a copy of this Protective Order and shall sign a Non-Disclosure Agreement
12 in the form annexed as an Exhibit hereto stating that that person has read this
13 Order, agrees to be bound by its terms, and will have access to either (a)
14 Confidential material or (b) both Confidential and Confidential – Attorneys’ Eyes
15 Only material.
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18 9. Any party who either objects to any designation of confidentiality
19 (*i.e.*, Confidential or Confidential – Attorneys’ Eyes Only), or who, by contrast,
20 requests still further limits on disclosure (such as “Highly Confidential – Outside
21 Counsels Attorneys’ Eyes Only” in extraordinary circumstances), may at any time
22 prior to the trial of this action serve upon counsel for the designating person a
23 written notice stating with particularity the grounds of the objection or request. If
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1 agreement cannot be reached promptly, counsel for all affected persons will
2 *follow the Local Rules and The Federal Rules of Civil procedure*
3 ~~convene a joint telephone call with the Court~~ to obtain a ruling.

4 10. All persons are hereby placed on notice that the Court is unlikely to
5 seal or otherwise afford confidential treatment to any Discovery Material
6 introduced in evidence at trial, even if such material has previously been sealed
7 or designated as Confidential or Confidential – Attorneys’ Eyes Only. The Court
8 also retains discretion whether or not to afford confidential treatment to any
9 confidential or attorneys’ eyes only document or information contained in any
10 confidential or attorneys’ eyes only document submitted to the Court in
11 connection with any motion, application, or proceeding that may result in an order
12 and/or decision by the Court.
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16 11. Each person who has access to Discovery Material that has been
17 designated as Confidential or Confidential – Attorneys’ Eyes Only shall take all
18 due precautions to prevent the unauthorized or inadvertent disclosure of such
19 material.
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21 12. If, in connection with this litigation and despite a producing person
22 having taken reasonable steps to prevent the disclosure of information that it
23 claims is subject to a claim of attorney-client privilege or attorney work product,
24 a party inadvertently discloses information subject to a claim of attorney-client
25 privilege or attorney work product protection (“Inadvertently Disclosed
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1 Information”), such disclosure, in itself, shall not constitute or be deemed a waiver
2 or forfeiture of any claim of privilege or work product protection with respect to
3 the Inadvertently Disclosed Information and its subject matter.
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5 13. If a disclosing party makes a claim of inadvertent disclosure, the
6 receiving party shall, within five business days, return or destroy all copies of the
7 Inadvertently Disclosed Information, and provide a certification of counsel that
8 all such information has been returned or destroyed.
9

10 14. The receiving party may move the Court for an Order compelling
11 production of the Inadvertently Disclosed Information. The motion shall be filed
12 under seal, and shall not assert as a ground for entering such an Order the fact of
13 the inadvertent production.
14

15 15. The disclosing party retains the burden of establishing the privileged
16 or protected nature of any Inadvertently Disclosed Information. Nothing in this
17 Order shall limit the right of any party to request an in camera review of the
18 Inadvertently Disclosed Information.
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20 16. This Protective Order shall survive the termination of the litigation.
21 Within 30 days of the final disposition of this action, all Discovery Material
22 designated as “Confidential” or “Confidential – Attorneys’ Eyes Only,” and all
23 copies thereof, shall be promptly destroyed in accordance with the next sentence.
24 The parties recognize that electronically produced information (ESI) results in
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1 copies made due to back up and archive protocols and no party can guaranty that
2 every copy has been found and deleted. Therefore, the parties commit to use best
3 reasonable efforts to delete confidential information. The parties will use best
4 reasonable efforts to delete confidential information from Concordance or
5 Summation or similar document review/management programs and will use best
6 reasonable efforts to destroy any hard copies made of confidential information as
7 well as confidential ESI stored in other locations.
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10 17. During the pendency of this case only, this Court shall retain
11 jurisdiction over all persons subject to this Order to the extent necessary to enforce
12 any obligations arising hereunder or to impose sanctions for any contempt thereof.
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14 IT IS SO ORDERED.
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16 2/22/16



17 CHARLES F. EICK
18 United States Magistrate Judge
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EXHIBIT

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Defendants.

The Hon. Michael W. Fitzgerald

Mag. Judge Charles F. Eick

NO. 2:15-cv-03901 MWF-E

**NONDISCLOSURE
AGREEMENT**

1 I, _____, acknowledge that I have read and understand the
2 Protective Order in this action governing the non-disclosure of those portions of Discovery
3 Material that have been designated as Confidential and/or Confidential – Attorneys’ Eyes Only
4 (“Confidential Discovery Material”). I agree that I will not disclose such Confidential
5 Discovery Material to anyone other than for purposes of this litigation and pursuant to the terms
6 of the Protective Order, and that at the conclusion of the litigation I will return all discovery
7 information to the party or attorney from whom I received it. By acknowledging these
8 obligations under the Protective Order, I understand that I am submitting myself to the
9 jurisdiction of the United States District Court for the Central District of California, Western
10 Division, for the purpose of any issue or dispute arising hereunder and that my willful violation
11 of any term of the Protective Order could subject me to punishment for contempt of Court.
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16 Dated: _____
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